

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 OTIS THOMAS,) No. C 06-0184 MMC (PR)
12 Plaintiff,)
13 v.) **ORDER GRANTING MOTION FOR**
14) **SUMMARY JUDGMENT**
15 IMAM ABDUL MALIK SAAFIR,) (Docket No. 16)
16 et al.,)
17 Defendants.)

18 On January 11, 2006, plaintiff, a California prisoner then incarcerated at Salinas
19 Valley State Prison (“SVSP”) and proceeding pro se, filed the above-titled civil rights action
20 under 42 U.S.C. § 1983, alleging he had been denied the right to attend religious services.
21 On May 11, 2006, the Court found plaintiff had stated cognizable claims under the First
22 Amendment and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”)
23 against SVSP defendants Imam Abdul Malik Saafir (“Saafir”), Sergeant M. J. Kircher
24 (“Kircher”), and Captain G. Ponder (“Ponder”); the Court ordered the complaint served on
25 those defendants. On June 13, 2006, plaintiff filed a First Amended Complaint (“FAC”),
26 alleging defendants were continuing to deny him the right to attend religious services. On
27 June 30, 2006, after reviewing the FAC, the Court found plaintiff had stated cognizable
28 claims against Saafir, Kircher, and Ponder for the ongoing violation of plaintiff’s rights under

1 the First Amendment and RLUIPA. The Court ordered defendants to file a dispositive
2 motion, or, alternatively, a notice that they were of the opinion the claims in the FAC could
3 not be resolved by such a motion. Now before the Court is defendants' joint motion for
4 summary judgment. Plaintiff has filed an opposition to the motion, and defendants have filed
5 a reply.

6 **FACTUAL BACKGROUND¹**

7 Plaintiff was at all times relevant to the complaint a practicing Muslim (FAC at 2),
8 and was housed in Facility C at SVSP. (Decl. Capt. Ponder Supp. Defs.' Mot. Summ. J.
9 ("Ponder Decl.") ¶ 5.) Facility C is a "Level IV 180" housing unit at SVSP. (*Id.*) Level IV
10 180 prisoners have a history of assaultive behavior and disciplinary action, gang-related
11 convictions, convictions under California's "Three Strikes Law," prison sentences for a term
12 of life without parole, or a determinate sentence of fifty years or more. (*Id.*) These prisoners
13 require the highest level of security of all inmates at SVSP. (*Id.*) Level IV 180 prisoners are
14 not allowed to be unsupervised at any time; allowing Level IV 180 prisoners to gather
15 unsupervised would risk a breach in the safety and security of the institution, and place
16 prisoners and staff at risk of physical injury. (*Id.*) Pursuant to SVSP's Operational
17 Procedures, no organized religious activity will occur at SVSP unless there is "immediate
18 and direct supervision of inmates participating in religious activities." (Defs.' Req. Jud. Not.
19 Ex. A.)²

20 Defendant Saafir served as the Muslim Chaplain at SVSP from November 19, 2001 to
21 January 15, 2005. (Decl. Imam Saafir Supp. Defs.' Mot. Summ. J. ("Saafir Decl.") ¶ 3.) As
22 the Muslim Chaplain, Saafir was responsible for providing spiritual guidance to prisoners,
23 conducting Islamic religious services and instruction, and scheduling and conducting
24 religious programming and activities. (*Id.* ¶ 4.) Saafir had regular office hours in Facility C

25
26 ¹Except where otherwise noted, the facts set forth in the background section are not
disputed by the parties.

27 ²Pursuant to Federal Rule of Evidence 201, the Court grants defendants' request that
28 the Court take judicial notice of SVSP's Operational Procedure 24, Inmate Religious
Programs, which is attached to defendants' request as Exhibit A.

1 from 7:00 a.m. to 3:00 p.m., Tuesday through Saturday. (Id. ¶ 5.) During these office hours,
2 Saafir was available for consultation with SVSP prisoners seeking counseling or discussion
3 about the Islamic religion and its tenets. (Id.) Additionally, Saafir conducted religious
4 classes one day per week in each of the four facilities at SVSP. (Id.)

5 A follower of the Muslim faith prays five times a day, each day of the week. (Id. ¶ 6.)
6 On Fridays, the second prayer of the day, the Dhur prayer, is performed with a congregation
7 of other followers of the Muslim faith. (Id. ¶ 7.) This prayer is called the Jumu'ah, or
8 congregation, prayer, because Jumu'ah means "congregation of worship." (Id.)

9 According to Saafir, there is no compulsion or requirement in the Muslim faith that
10 any prayer be performed with a group. (Id. ¶ 6, 7.) Consequently, Saafir maintains, if a
11 follower of the Muslim faith is unable to congregate for the Jumu'ah prayer, he may perform
12 the Dhur prayer alone, and practicing the Muslim faith in this manner would not result in a
13 sin or other religious penalty. (Id. ¶ 7) According to plaintiff, however, the Muslim faith
14 requires him to participate in Jumu'ah services with other Muslims every Friday. (FAC at 6.)
15 Plaintiff states his inability to attend Jumu'ah services created impediments that prevented
16 him from practicing and performing the duties of his faith. (FAC at 7.)

17 Jumu'ah prayer is to take place at a specific time following the zenith of the sun, at
18 approximately 12:30 or 1:00 p.m., depending on the time of year. (Saafir Decl. ¶ 8.)
19 Jumu'ah prayer takes at least forty-five minutes to complete. (Id.) While serving as the
20 Muslim Chaplain at SVSP, Saafir led the Jumu'ah prayer each Friday at one of the four
21 SVSP facilities, Facilities A, B, C, and D. (Id..) Because it was physically impossible for
22 Saafir to visit each of the four facilities on Friday and perform the Jumu'ah prayer service at
23 the required time, Saafir would alternate between each of the four SVSP facilities, visiting
24 each facility one Friday per month to perform the Jumu'ah services. (Id.)

25 On December 3, 2004, plaintiff filed an inmate appeal at the informal level of review,
26 in which he complained that from November 19, 2004 to December 3, 2004, Saafir had not
27 come to Facility C to perform Friday religious services. (Ponder Decl. Ex. A at 11.) Saafir
28 interviewed plaintiff regarding the appeal, and explained to him that the Facility C Captain

1 and staff were not allowing services to be held when Saafir was unavailable, because staffing
2 was inadequate to secure the chapel. Consequently, Jumu'ah services would only be
3 conducted on the third Friday of each month by Saafir. (Id.)

4 Plaintiff next filed an appeal at the first level of review, claiming that because
5 attending Jumu'ah services was a religious obligation for all Muslims, prisoners should be
6 allowed to attend Jumu'ah services even if Saafir was not available to conduct the services.
7 Plaintiff requested an inmate minister be allowed to conduct the services in Saafir's stead.
8 (Id. at 8.) Defendant Kircher, a Correctional Sergeant, interviewed plaintiff regarding the
9 appeal. On January 21, 2005, Kircher denied the appeal, based on SVSP Operational
10 Procedure 24, section 24.1, which states in part that no organized religious activity will occur
11 at SVSP unless there is "immediate and direct supervision of inmates participating in
12 religious activities." (Id.; Defs.' Req. Jud. Not. Ex. A.) Kircher also denied the appeal on
13 the basis of California Code of Regulations, title 15 section 3211(a), which provides:

14 When a chaplain of a particular faith cannot be obtained to conduct services
15 within a facility housing inmates of that faith, the institution head may at their
16 discretion and subject to such controls reasonably required for facility security,
17 designate a qualified inmate to minister to the religious needs of inmates for
that specific faith. In determining the qualifications of an inmate to conduct
such services, the institution will, whenever possible, seek the advice and
counsel of outside religious leaders of that faith.

18 (Ponder Decl. Ex. A at 8, 10.)

19 Plaintiff next filed his appeal at the second level of review. Defendant Ponder, a
20 Correctional Captain, was assigned to investigate the appeal. (Id. at 3.) On February 14,
21 2005, the appeal was denied by Lt. Scribner, the Chief Deputy Warden at SVSP. (Id. at 5.)
22 Relying upon SVSP's Operational Procedures, the California Code of Regulations, and the
23 Department Operations Manual, Scribner responded to the appeal as follows:

24 The appellant's request to be allowed to attend Islamic services without the
25 Chaplain present would place inmates and staff at risk and jeopardizes
26 institutional security. Inmates housed on Level-IV 180 Designated Housing
are not allowed to be unsupervised at any time. Therefore, this portion of the
appeal request is denied.

27 As a temporary remedy, the appellant was advised that the Muslim Community
28 on Facility-C has been provided with the approval to identify two Inmate
Spiritual Leaders, one for Facility-C Yard #1 and one for Yard #2. The

1 appellant was provided the opportunity to speak to the Facility-C Muslim
2 Community on both Yard #1 and Yard #2 to advise them of this temporary
3 measure to resolve this issue until a Muslim Chaplain can be hired or a Muslim
4 volunteer from the outside community can be found by the institution.

5 (Id. at 4-5.)

6 Plaintiff pursued his appeal to the final level of review, the Director's Level of review.
7 On September 12, 2005, the appeal was denied by N. Grannis, Chief of the Inmate Appeals
8 Branch, who concluded, in light of the facts developed at the first and second levels of
9 review, that the Jumu'ah prayer was being afforded to prisoners "according to departmental
10 policy, institutional security, facility resources, and reasonable penological interests," and
11 that there was no evidence SVSP was preventing prisoners from practicing their religious
12 beliefs within the confines of their cells. (Decl. T. Emigh Supp. Defs.' Mot. Summ. J.
13 ("Emigh Decl.") Ex. B.)

DISCUSSION

A. Legal Standard

1 Summary judgment is proper where the pleadings, discovery and affidavits show there
2 is "no genuine issue as to any material fact and that the moving party is entitled to judgment
3 as a matter of law." See Fed. R. Civ. P. 56(c). Material facts are those that may affect the
4 outcome of the case. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A
5 dispute as to a material fact is genuine if the evidence is such that a reasonable jury could
6 return a verdict for the nonmoving party. See id.

7 The court will grant summary judgment "against a party who fails to make a showing
8 sufficient to establish the existence of an element essential to that party's case, and on which
9 that party will bear the burden of proof at trial . . . since a complete failure of proof
10 concerning an essential element of the nonmoving party's case necessarily renders all other
11 facts immaterial." See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); see also
12 Anderson v. Liberty Lobby, 477 U.S. at 248 (holding fact is material if it might affect
13 outcome of suit under governing law; further holding dispute about material fact is genuine
14 "if the evidence is such that a reasonable jury could return a verdict for the nonmoving

1 party"). The moving party bears the initial burden of identifying those portions of the record
2 that demonstrate the absence of a genuine issue of material fact. The burden then shifts to
3 the nonmoving party to "go beyond the pleadings, and by his own affidavits, or by the
4 'depositions, answers to interrogatories, or admissions on file,' designate 'specific facts
5 showing that there is a genuine issue for trial.'" See Celotex, 477 U.S. at 324 (citing Fed. R.
6 Civ. P. 56(e)).

7 In considering a motion for summary judgment, the court must view the evidence in
8 the light most favorable to the nonmoving party; if, as to any given fact, evidence produced
9 by the moving party conflicts with evidence produced by the nonmoving party, the court
10 must assume the truth of the evidence set forth by the nonmoving party with respect to that
11 fact. See Leslie v. Grupo ICA, 198 F.3d 1152, 1158 (9th Cir. 1999). The court's function on
12 a summary judgment motion is not to make credibility determinations or weigh conflicting
13 evidence with respect to a disputed material fact. See T.W. Elec. Serv. v. Pacific Elec.
14 Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987).

15 B. Analysis

16 1. Injunctive Relief Claims

17 When plaintiff filed his FAC, he was incarcerated at SVSP and alleged the ongoing
18 denial by defendants of his ability to attend Jumu'ah services. He sought both injunctive
19 relief and monetary damages. Plaintiff currently is incarcerated at Centinela State Prison.
20 Accordingly, as the injunctive relief plaintiff seeks no longer can be provided by defendants,
21 plaintiff's claims for injunctive relief will be denied as moot. See Dilley v. Gunn, 64 F.3d
22 1365, 1368-69 (9th Cir. 1995).

23 2. Free Exercise Claim

24 The First Amendment guarantees the right to the free exercise of religion. Cruz v.
25 Beto, 405 U.S. 319, 323 (1972). "The free exercise right, however, is necessarily limited by
26 the fact of incarceration, and may be curtailed in order to achieve legitimate correctional
27 goals or to maintain prison security." O'Lone v. Shabazz, 482 U.S. 342, 348 (1987). In
28 order to establish a free exercise violation, a prisoner must show that the defendant burdened

1 the practice of his religion, by preventing him from engaging in conduct mandated by his
2 faith, without any justification reasonably related to legitimate penological interests.
3 Freeman v. Arpaio, 125 F.3d 732, 736 (9th Cir. 1997). To reach the level of a constitutional
4 violation, “the interference with one’s practice of religion must be more than an
5 inconvenience; the burden must be substantial and an interference with a tenet or belief that
6 is central to religious doctrine.” Id. at 737 (internal quotation and citation omitted).

7 In his FAC, plaintiff alleges that his participation in Jumu’ah services with other
8 Muslims every Friday is a central tenet of his faith. (FAC at 6, 7.) He makes the same
9 contention in his opposition to defendants’ motion for summary judgment, wherein plaintiff
10 cites to what he asserts is a passage from the Quran, the holy book of Islam, requiring all
11 Muslims to leave work to attend Jumu’ah services, and to an article from an unidentified
12 source (which plaintiff has attached to his opposition as Exhibit A), which describes Jumu’ah
13 as “mandatory” and an “obligation” for Muslims. (Opp. at 4; Ex. A at 2, 3.) The assertions
14 in plaintiff’s FAC and opposition do not constitute evidence the Court can consider in ruling
15 on defendants’ motion for summary judgment, because neither the complaint nor the
16 opposition is verified, and the article plaintiff relies upon is unauthenticated. See Fed. R.
17 Civ. P. 56(e) (setting forth evidentiary requirements for supporting and opposing summary
18 judgment motion); Fed. R. Evid. 901 (requiring authentication or identification as a condition
19 precedent to admissibility of evidence); see also Schroeder v. McDonald, 55 F.3d 454, 460 &
20 nn.10-11 (9th Cir. 1995) (allowing verified complaint to function as opposing affidavit under
21 Rule 56 if based on personal knowledge and sets forth specific facts admissible in evidence).³

22 By contrast, Saafir, in his declaration in support of the motion for summary judgment,
23 attests to the following admissible evidence with respect to plaintiff’s allegation that Muslims
24 are required to attend congregational Jumu’ah services:
25

26 A follower of the Muslim faith performs five prayers per day each day
27 of the week. Each prayer is divided into two portions; each portion is a rakat.
28 The first prayer is the Fajr prayer and is performed before sunrise. The second

³In the Court’s Order of Service of May 11, 2006, plaintiff was advised in detail of the need to submit admissible evidence when opposing a motion for summary judgment.

portion is the Dhur prayer which is performed after the zenith of the sun, which occurs at approximately 12:00 p.m. The Dhur prayer is followed by the Asr prayer, called the “evening” prayer. The fourth prayer is the Magrib prayer performed in the late evening after sunset. The fifth and final prayer is the Isha prayer which is performed just before going to bed. All of the prayers may be performed in a congregation or with other followers of the Muslim faith, but any follower may perform their prayers alone. There is no requirement within the Muslim faith that these prayers be performed with a group. No religious penalty will be incurred for not performing prayer with a group of other followers.

On Fridays, the second prayer of the day, or Dhur prayer, is performed with a congregation of other followers of the Muslim faith. This prayer is then called the Jumu’ah, or congregation, prayer because “Jumu’ah” means “congregation of worship.” However, because there is no compulsion or restraint in the Muslim religion, if a follower is unable to congregate for the Jumu’ah prayer, he may simply perform the Dhur prayer. Because many followers of the Muslim faith have commitments during Fridays they are unable to avoid, such as employment, they do not regularly attend Jumu’ah prayer. Instead, these followers practice their religion by performing the Dhur prayer. Practicing the Muslim faith in this manner would not result in a sin or other religious penalty.

(Saafir Decl. ¶¶ 6-7.)

In sum, plaintiff has not put forth admissible evidence sufficient to create a genuine issue of material fact as to whether attending congregational Jumu’ah services every Friday, rather than simply fulfilling the obligation to perform the Dhur prayer every day, is mandated by the Muslim faith. Cf. O’Lone, 482 U.S. at 345 (citing to record therein; finding record established prisoners’ sincerely held religious beliefs compelled attendance at Jumu’ah services).

Moreover, even if there were evidence to support plaintiff’s allegations that defendants prevented him from engaging in conduct mandated by his religion, no violation of his First Amendment rights can be made out if the restriction was reasonably related to legitimate penological objectives. See id. at 349 (citing Turner v. Safley, 482 U.S. 78, 89 (1987)). The Supreme Court has identified four factors for courts to consider when determining whether a regulation is reasonably related to legitimate penological interests: (1) whether there is a “valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it”; (2) “whether there are alternative means of exercising the right that remain open to prison inmates”; (3) “the impact

1 accommodation of the asserted constitutional right will have on guards and other inmates and
2 on the allocation of prison resources generally”; and (4) the “absence of ready alternatives,”
3 or, in other words, whether the rule at issue is an “exaggerated response to prison concerns.”
4 Turner, 482 U.S. at 89-90.

5 The task in considering the Turner factors is not to balance the four factors, but,
6 rather, to determine whether the state shows a “reasonable” relation between the policy and
7 legitimate penological objectives, rather than simply a “logical” one. Beard v. Banks, 126 S.
8 Ct. 2572, 2580 (2006). While all justifiable inferences must be drawn in the prisoner’s favor
9 with respect to matters of disputed fact, in disputed matters of professional judgment the
10 court’s inferences must accord deference to the views of prison authorities. See id. at 2578.
11 Unless a prisoner can point to evidence showing the policy is not reasonably related to
12 legitimate penological objectives, sufficient to allow him to prevail on the merits, he cannot
13 prevail at the summary judgment stage. Id.

14 Here, with respect to the first Turner factor, defendants assert they were unable to
15 provide plaintiff with access to weekly Jumu’ah services because Saafir could not be at all
16 four SVSP facilities at the same time to conduct services each Friday, and due to the high
17 level of security required for Facility C Level IV 180 prisoners, the prisoners could not
18 gather for Jumu’ah services unsupervised. Plaintiff does not dispute the fact of Saafir’s
19 limited availability or the high security needs of Facility C Level IV 180 prisoners. He
20 argues, however, that prison regulations authorized prison officials to designate a qualified
21 inmate to lead the services in place of Saafir, and that Saafir had in fact identified that
22 inmate. (See Opp. at 4; Ex. A at 1.) In response, defendants assert that under prison
23 regulations the designation of an inmate to lead religious services can be done only by the
24 head of the institution, that none of the defendants had the authority to designate an inmate
25 for such purpose, and that, even if defendants did possess such authority, security concerns
26 dictated that Facility C Level IV 180 prisoners be supervised at all times, thereby negating
27 the possibility of inmate-led religious services.

28 The prison regulation at issue, as noted, provides:

1 When a chaplain of a particular faith cannot be obtained to conduct services
2 within a facility housing inmates of that faith, the institution head may at their
3 discretion and subject to such controls reasonably required for facility security,
4 designate a qualified inmate to minister to the religious needs of inmates for
5 that specific faith.

6 Cal. Code Regs., tit. 15 § 3211(a). Because it is undisputed that neither Saafir, Kircher nor
7 Ponder was the institution head at SVSP, none of said defendants can be held liable for
8 failing to designate an inmate to lead the Jumu'ah services.

9 Further, plaintiff has not presented admissible evidence that calls into question the
10 legitimate security concerns faced by prison officials with respect to Facility C Level IV 180
11 prisoners, and the rational relationship between refusing inmate-led services and addressing
12 those concerns. See Anderson v. Angelone, 123 F.3d 1197, 1198 (9th Cir. 1997) (holding
13 ban on inmate-led religious activity reasonably related to legitimate security concerns that
14 inmate activities be supervised and religious groups not subvert prison authority).

15 Accordingly, the Court finds defendants have satisfied the first element of the Turner test, in
16 that defendants have shown a logical connection between the policy of not allowing inmate-
17 led religious services for Facility C Level 180 prisoners and the legitimate need for ensuring
18 prison security. See O'Lone, 482 U.S. at 350 (finding policy not allowing inmates to return
from outside work detail to attend Jumu'ah services logically connected to prison's
legitimate security and administrative concerns).

19 As noted, the second Turner factor is "whether there are alternative means of
20 exercising the right that remain open to prison inmates." Turner, 482 U.S. at 89-90. In
21 O'Lone, the Supreme Court upheld a prison regulation that precluded prisoners from
22 returning mid-day for Jumu'ah prayer services, where those prisoners were part of a work-
23 gang detailed on assignments outside of the prison. See O'Lone, 482 U.S. at 349. The
24 Supreme Court found that although there were no alternative means for the prisoners to
25 attend Jumu'ah services, the prisoners nevertheless retained their ability to participate in
26 other Muslim religious ceremonies and practices, and that such ability supported the
27 reasonableness of the restriction. Id. at 352-53. Here, even though plaintiff could not attend
28 Jumu'ah congregational services for a number of Fridays, it is not disputed he retained the

1 ability to pray the Dhur prayer on those Fridays, and to practice other aspects of his religion.
2 Accordingly, the Court finds defendants have satisfied the second element of the Turner test.

3 With respect to the third Turner factor, the evidence before the Court shows
4 defendants' restriction on inmate-led Jumu'ah services was reasonable in light of the impact
5 the accommodation of plaintiff's asserted right to such services would have on the allocation
6 of prison resources generally. According to defendants' undisputed evidence, there was no
7 qualified Muslim Chaplain to preside over Jumu'ah services on a regular basis at Facility C
8 during the relevant time period, and because staffing was inadequate to secure the chapel,
9 prison staff would not allow services to be held when Saafir was unavailable. (See Ponder
10 Decl. Ex. A at 11.) Allowing for inmate-led Jumu'ah services would not have reduced the
11 need for prison officials to allocate prison staff to supervise the services, because Facility C
12 Level IV 180 prisoners must be supervised at all times. Consequently, prison officials could
13 reasonably conclude that such allocation would create staff shortages and lead to problems in
14 other parts of the prison. As to the fourth Turner factor, these difficulties also make clear
15 that there were no "obvious, easy alternatives" to the policy adopted by defendants. See
16 O'Lone, 482 U.S. at 353. Accordingly, the Court finds defendants have satisfied the third
17 and fourth elements of the Turner test.

18 In sum, for the reasons discussed above, the Court concludes defendants have shown a
19 reasonable relation between their policies of alternating Jumu'ah services at each of the four
20 SVSP prison facilities, and not allowing inmate-led Jumu'ah services at Facility C, and
21 legitimate penological objectives. Accordingly, defendants are entitled to summary
22 judgment on plaintiff's First Amendment claim.

23 3. RLUIPA Claim

24 RLUIPA provides that no state may impose a "substantial burden" on a prisoner's
25 exercise of religion unless the action or policy in question provides the least restrictive means
26 of serving a compelling governmental interest. 42 U.S.C. § 2000cc-1(a). In order to state a
27 claim under RLUIPA, the plaintiff bears the burden of coming forward with evidence
28 demonstrating the state's action or policy constituted a substantial burden on his exercise of

1 religion. Warsoldier v. Woodford, 418 F.3d 989, 994-95 (9th Cir. 2005). The focus of this
2 initial inquiry necessarily is on the manner in which the plaintiff's religious exercise is
3 impacted, rather than on the reasonableness of the facility's policy or regulation. Id. at 995.

4 RLUIPA does not define "substantial burden." See 42 U.S.C. § 2000cc-5. The Ninth
5 Circuit, however, has held an action or policy constitutes a substantial burden if it constitutes
6 a "significantly great restriction or onus on any exercise of religion, whether or not
7 compelled by, or central to, a system of religious belief of a person, including a religious
8 assembly or institution." San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024,
9 1034-35 (9th Cir. 2004) (internal quotations omitted). As further defined by the Ninth
10 Circuit, a substantial burden "must be more than an inconvenience"; it must prevent the
11 plaintiff "from engaging in [religious] conduct or having a religious experience." Navajo
12 Nation v. United States Forest Serv., 479 F.3d 1024, 1033 (9th Cir. 2006) (internal quotations
13 and citations omitted).

14 Defendants contend the restriction on plaintiff's ability to attend weekly Jumu'ah
15 services was not a substantial burden on plaintiff's exercise of religion because he was not
16 prevented from practicing his Muslim faith, he was provided with ample opportunities to
17 meet with the Muslim Chaplain for religious education and counseling, and, even if he could
18 not congregate with other inmates to perform the Dhur prayer at Jumu'ah services every
19 Friday, he nevertheless could fulfill his religious obligation by performing the Dhur prayer
20 alone in his cell or elsewhere on Fridays. In response, plaintiff argues there is no alternative
21 practice that can replace his obligation to attend Jumu'ah services every Friday.

22 It is undisputed plaintiff was restricted from regularly attending Jumu'ah services, an
23 important practice of the Muslim faith. Plaintiff has not established, however, that this
24 restriction prevented him from engaging in religious conduct. Importantly, plaintiff was not
25 prevented from performing the Dhur prayer on Fridays. Although congregating with other
26 Muslims each Friday to perform the Dhur prayer at a Jumu'ah service might be the preferred
27 way for plaintiff to practice his faith, he has not shown that his inability to do so resulted in a
28 "significantly great" restriction or onus on the exercise of his religion. Despite the

1 restrictions imposed by SVSP's policy, plaintiff retained his ability to perform his prayers, to
 2 attend Jumu'ah services when they were available to him, and to engage in other religious
 3 educational and counseling activities. For these reasons, the Court finds plaintiff has not met
 4 his burden of coming forward with evidence that SVSP's policy constituted a substantial
 5 burden on his exercise of religion. See, e.g., Mohammad v. Beard, 2007 WL 1439051, *10
 6 (W.D. Pa. 2007) (finding denial of prayer rug did not constitute substantial burden on
 7 Muslim prisoner's religious beliefs where prisoner showed only it was essential he pray on
 8 clean area, not that he pray on prayer rug); Greene v. Solano County Jail, 2006 WL 2067056,
 9 *9 (E.D. Cal. 2006) (finding failure to provide group worship services did not substantially
 10 burden prisoner's ability to exercise his religion, and effect on prisoner's exercise of religion
 11 was "only incidental," where prisoner was not required to act contrary to his religious beliefs,
 12 and alternate means remained available to prisoner to exercise his religious beliefs); cf.
 13 Warsoldier, (finding prison officials substantially burdened prisoner's religious practice by
 14 subjecting him to numerous punishments because he refused to cut his hair).⁴

15 In sum, plaintiff has not established that SVSP's policies, of alternating Jumu'ah
 16 services between the four SVSP facilities and not allowing inmate-led services, substantially
 17 burdened the practice of plaintiff's religion under RLUIPA. Accordingly, defendants are
 18 entitled to summary judgment on plaintiff's RLUIPA claim.

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 22
 23
 24 ⁴ In light of the Court's resolution of plaintiff's RLUIPA claim on the grounds
 25 discussed, the Court has not considered whether RLUIPA permits suit against defendants in
 26 their individual capacities. Compare Boles v. Neet, 402 F. Supp.2d 1237, 1240 (D. Colo.
 27 2005) (holding RLUIPA actions may be brought against governmental entity but do not
 28 appear to be permitted against officials in their individual capacities), with Guru Nanak Sikh
 Society of Yuba City v. Sutter, 326 F. Supp.2d 1128, 1136 (E.D. Cal. 2003) (holding
 RLUIPA permits actions against officials at least in their official capacities). Likewise, the
 Court has not considered whether money damages can be recovered for RLUIPA violations.
Compare Boles, 402 F. Supp.2d at 1241 (holding damages not available), with Bess v.
 Alameida, 2007 WL 2481682, *21 (E.D. Cal. 2007) (holding damages available).

CONCLUSION

2 For the reasons stated, defendants' motion for summary judgment is hereby
3 GRANTED and judgment shall be entered in favor of all defendants.

4 This order terminates Docket No. 16.

5 The Clerk shall close the file.

6 || IT IS SO ORDERED.

7 || DATED: September 28, 2007

8

Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge

United States District Court

For the Northern District of California